



August 4, 2000

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2000-2960

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137857.

The City of Austin (the "city") received a request for the following information:

- (1) All copies of any information or files that the Austin Police Department has with my name or concerning my name.
- (2) The reason that Austin Police Department is in flagrant violation of the Texas Constitution after already having been made aware of the violations concerning Oaths of Office months prior to this incident?
- (3) The validity of this ticket that was forced upon me by under educated Armed Rogue agents who are committing a third degree felony.
- (4) Also an explanation of how this is not an attempt to force a Bill of Attainder upon my person illegally.
- (5) A statement that explains why the Austin Police Department does not have to adhere to the Texas Constitution.
- (6) The identities of all of the persons claiming employment from the City of Austin that responded to the incident.
- (7) Finally, a decision on my claim for \$50,000 for the gross violation of my Rights by Armed Rogues imitating police officers with the blessing of the City of Austin.

You state that a portion of the information responsive to items 1 and 6 will be made available to the requestor. Further, you claim that items 2, 3, 4, 5, and 7 are not requests for information under the Public Information Act (the "Act"). You claim that the remaining information responsive to items 1 and 6 are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

With regard to items 2-5 and 7, the Act does not require a governmental body to answer factual questions. Open Records Nos. 379 (1983), 347 (1982), 555 (1990). Nor does the Act require a governmental body to perform legal research. Open Records No. 563 (1990). Therefore, you are under no obligation under the Act to provide answers to the requestor's questions. Further, the Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Nos. 605 at 2 (1992), 572 at 1 (1990), 558 at 1 (1990), 362 at 2 (1983). Thus, the city is under no obligation to obtain or prepare new information in response to the request. *See* Gov't Code §§ 552.002, 552.021, 552.227, 552.351; Open Records Decision No. 572 (1990). However, the city must make a good faith effort to relate the request to information which it holds. Open Records Decision No. 561 at 8 (1990).

You assert that the submitted information is excepted under section 552.103. Section 552.103(a) provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an

attorney from an opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 at 2 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). Although the requestor claims that the city owes damages for violation of his rights, we conclude that the requestor merely threatens litigation and the city has not provided any information that shows that the requestor has taken any objective steps toward filing suit. Therefore, we find that the city has not demonstrated that litigation is reasonably anticipated. Thus, you may not withhold the information under section 552.103.¹

You also assert that a portion of the submitted documents are excepted under section 552.108. Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You state that the submitted information relates to a pending criminal investigation. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the city may withhold the information under section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 177. Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

We note that among the information which must be released are driver's license numbers and social security numbers. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency

¹We note that you assert that a portion of the records are the subject of pending request ID# 137255 and are subject to pending litigation against the city. We have reviewed the submitted documents in ID# 137255 and have determined that the documents are not the same documents at issue in this ruling.

of this state. Therefore, you must withhold the marked driver's license numbers under section 552.130(a) of the Government Code.

Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* However, it is not apparent to us that the social security numbers were obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, the city should ensure that these numbers were not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, we find that the city may withhold one of the incident reports under section 552.108. The city must release the remaining information with driver's license numbers and possibly social security numbers redacted.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

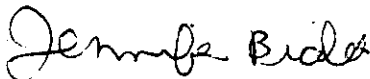
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 137857

Encl: Marked documents

cc: Mr. Crae Pease
C/O 1040 CR 348
Lexington, Texas 78947
(w/o enclosures)